IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 964 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPBHAI NATHUBHAI JAISWAL - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR RC JANI for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/07/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India r.w. section 482 of the Criminal Procedure Code, the petitioner – original accused has prayed for an appropriate order quashing and setting aside the complaint /

FIR being CR No.I – 06 of 2007 registered with Madhupura Police Station, Ahmedabad.

2. An FIR is lodged against the petitioner and another by the Police Inspector, Madhupura Police Station, Ahmedabad on 8.1.2007 for the offences punishable under sections 420, 468, 471, 482, 487, 483, 272, 273 and 114 of I.P.C. and under sections 3 and 7 of the Essential Commodities Act r.w. sections 102, 103 and 104 of the Trademark Act; 1999 alleging inter alia that the petitioner – original accused No.1 and another were arrested while trying to sell Ghee tins of Amul brand by producing duplicate Ghee and preparing duplicate dies of Amul Ghee and preparing duplicate trademark of Amul brand. The petitioner came to be arrested and the petitioner submitted their application for regular bail being Criminal Misc. Application No. 784 of 2007 which has been rejected by the learned Additional Sessions Judge, Court No.11, Ahmedabad considering the nature of the offence alleged against the petitioner. Being aggrieved

and dissatisfied with the aforesaid complaint/FIR, the petitioner has preferred present application under Article 226 of the Constitution of India r.w. section 482 of the Criminal Procedure Code to quash and set aside the aforesaid complaint/FIR.

3. Shri R.C.Jani, learned advocate appearing for the petitioner has submitted that the involvement of the petitioner in the offence in question is only of duplicating the Ghee, however, physical presence of the petitioner was not found and therefore, it cannot be said that the petitioner has committed any offence as alleged. It is submitted that when the petitioner was not present, it is a question of secondary evidence and not of direct involvement and therefore, the impugned complaint / FIR is required to be quashed and set aside. It is also further submitted by him that in the complaint / FIR, nowhere it is mentioned that the person who has carried out the raid was having any powers or jurisdiction under the special notification

of the Essential Commodities Act and therefore, the impugned complaint / FIR is void *ab-initio* and is required to be quashed and set aside. It is also further submitted that therefore the subsequent procedure of filing of the charge-sheet is also required to be quashed and set aside.

4. On the other hand, Shri R.C.Kodekar, learned APP has submitted that looking to the averments and allegations in the complaint, it prima facie discloses cognizable offence which requires further trial and therefore, the impugned complaint / FIR is not required to be quashed and set aside. It is also further submitted by him that in fact after the investigation is concluded the charge-sheet is already filed therefore also, the present petition is required to be dismissed and if the petitioner is dissatisfied, the petitioner can move an appropriate application under section 227 of the Criminal Procedure Code. It is submitted that though the charge-sheet is filed, the petitioner

has not produced any charge-sheet papers. It is submitted that when the charge-sheet is filed, it can be presumed that there is a prima faice case against the petitioner and therefore, it is requested to dismiss the present petition.

5. On bare reading of the complaint / FIR, it prima facie discloses cognizable offence under the Indian Penal Code as well as other offences as alleged in the complaint. The petitioner and another were found preparing and trying to sell duplicate Ghee of Amul brand by manufacturing duplicate Ghee and having duplicate dies and with other instruments for preparing the Amul brand Ghee tins. Looking to the averments and allegations in the complaint, it prima facie requires further trial and it cannot be said that the complaint is so vexatious which requires to be quashed and set aside in exercise of the powers under section 482 of the Criminal Procedure Code. It is also required to be noted that even the charge-sheet is filed against the petitioner after the investigation is over

meaning thereby, there is prima facie case against the petitioner found by the police after conclusion of the investigation. Under the circumstances, no case is made out to invoke jurisdiction under section 482 of the Criminal Procedure Code to quash and set aside the complaint / FIR. So far as the contention on behalf of the petitioner that nowhere it is mentioned in the complaint that the person who has conducted the raid was not authorized under special notification under the Essential Commodities Act is concerned, it is required to be noted that such a question is required to be considered at the time of trial and on that ground, the FIR / complaint is not required to be quashed and set aside.

6. For the reasons stated above, petition fails and is accordingly dismissed. Notice discharged.

[M.R.Shah, J.]

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